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No. 315] NEW DELHI, SATURDAY, OCTOBER 27, 1956

ELECTION COMMISSION, INDIA NOTIFICATION

New Delhi-2, the 17th October 1956

S.R.O. 2476.—Whereas the election of Shri S. R. Guru, *alias* Gurulingiah, Doddaballapur and Shri B. M. Krishnamurthy, Landlord, Byyappanahalli, Bangalore South Taluk, as members of the Legislative Council of the State of Mysore from the Bangalore (Local Authorities) Constituency of that Council has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri R. Subbanna, Premises No. 22, Seshadri Road, Bangalore;

And Whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, BANGALORE

Dated the 26th day of September 1956

PRESENT

Shri G. Natarajan, B.A., B.L., *Chairman.*

And

Shri R. P. Vasudeo, B.A., B.L., *Member.*

Shri Bellgere Ramachandra Rao, B.A., B.L., *Member.*

ELECTION PETITION No. 4 of 1956

Petitioner.—R. Subbanna, landlord, residing in premises No. 22, Seshadri road, Bangalore—9.

Vs.

Respondents—

1. S. R. Guru *alias* Gurulingiah, Doddaballapur.
2. B. M. Krishna Murthy, land lord, Byyappanahalli, Bangalore South Taluk.
- 3 The Returning Officer, Local Authorities Constituency, Mysore Legislative Council, (Deputy Commissioner, Bangalore District, District Offices, Bangalore city.)
4. B. Channabyre Gowda, land lord, Hoskote.
5. M. Linge Gowda, land lord, Kanakapura,

The Secretary, Election Commission, India, New Delhi, has with his letter No. 82/4/56/9951, dated 6-6-56 forwarded a copy of the Notification No. 82/4/56/9930 dated 6-6-56 issued by the Commission regarding the appointment of the chairman of the Tribunal constituted for the trial of the Election Petition filed before the Commission by the petitioner R. Subbanna against the respondents calling in question the election of the 1st and 2nd respondents to the Legislative Council of the State of Mysore from the Bangalore (Local Authorities) Constituency of that Council in the election held on 2-5-1956.

ORDER

1. This is a petition under section 81 of the Representation of the People Act, 1951 filed before the Election Commission, India and referred to this Tribunal for trial.

2. The allegations in the petition are briefly these:—The petitioner and the respondents 1 and 2 stood as candidates for the election to the Mysore Legislative Council from Bangalore (Local Authorities) Constituency for the election held on 2-5-56. The counting of the votes was held on 3-5-56 by the Returning Officer. The total number of counted votes were 287. The Returning Officer declared 65 of these votes as invalid and out of the remaining 222 votes which he held to be valid, the first respondent was declared to have secured 97 votes and the second respondent 74 votes, and he declared that respondents 1 and 2 had been duly elected by the Bangalore (Local Authorities) Constituency to fill the seats in the Mysore Legislative Council of the two members retiring on 13-5-56 on the expiration of their term of office. The Returning Officer was of opinion that 61 out of the 65 votes which he declared invalid had to be declared as such on the ground that the signature of the elector in the said 61 ballot papers (holding them to be postal ballot papers) was not duly attested in that they had been attested by one who was neither a gazetted officer of the Mysore Government nor of the Central Government though it had been prescribed by the Election Commission that it should be attested by either of them. The Returning Officer has erred in holding that the officer who has attested the signature was not a gazetted officer of the Government of Mysore. The petitioner reliably understands and believes the same to be true that 58 out of these 61 votes which had been declared invalid had been cast in his favour and that they should have been declared valid. At all events the direction that the signature of the elector should be attested before a gazetted officer as stated above is at best a directory one and not a mandatory one in view of the requirement that each voter has to make a selection and he has accordingly made such and so long as there has been an attestation in writing before a particular officer who vouches for the signature of the elector and so long as the elector as such had voted, the Returning Officer ought to have held that there was a due attestation and at all events not to have rejected such votes on a bare technicality. Whatever may be the Returning Officer's limitations, it is open to the Tribunal to treat such votes as valid, looking into the substance and not the mere form of it. He submits that there should be a scrutiny and a recount and on such a recount the votes cast in favour of the petitioner should be treated as valid votes and added on to the votes which the Returning Officer has declared that the petitioner had secured. The petitioner learns and believes that none of the ballot papers which had been tendered conformed to the requirement under Rule 92 of the Representation of the People (Conduct of Elections and Election Petitions) Rules 1951 relating to the entry of the number of the ballot paper on the envelope, that the number given on the envelope to each of the elector was his number on the electoral roll while the number given on the ballot paper was entirely different, that on this alternative ground the result of the election has been materially affected by the non-compliance with Rule 92 and that therefore the election of the respondents 1 and 2 as returned candidates be declared void. The petitioner prays that orders may be passed under section 101 of the Representation of the People Act to declare the petitioner duly elected after declaring the election of the second respondent as void or alternatively under section 100(2) (c) of the Representation of the People Act to declare the election of respondents 1 and 2 to be void.

3. The first respondent is absent and *ex parte*. The second respondent has filed objections stating that the petition is bad for non-joinder of necessary parties since all the candidates who were duly nominated at the election have not been joined as respondents to the petition, that the petition is defective in so far as it has not been properly verified according to law, that the order of the Returning Officer holding that 65 votes polled were invalid and that out of them 61 votes were so invalid for the reason that the signatures of the electors concerned were not duly attested as required by the Act and the Rules and orders framed thereunder is correct, and that the said requirement is mandatory and not merely

directory. He further states that there is no error on the part of the Returning Officer or non-compliance with the correct procedure as alleged, that the election has not been materially affected by any alleged non-compliance of the Rule 92 of the Representation of the People Act (Conduct of Elections and Election Petitions) Rules 1951, that these objections were not urged before the Returning Officer and that further Rule 92 does not warrant the rejection of any ballot paper for the reason stated by the petitioner. The third respondent filed a statement stating that the votes declared invalid were not duly attested by a gazetted officer of the Government of Mysore, that all rules were observed for the conduct of the election in this case, that the number given on the envelope to each of the elector was the number given on the ballot paper and the serial number was kept up, the object being that there should not be mis-placement of the ballot papers in their respective envelopes, that the serial number printed on the ballot paper was concealed by pasting a thick paper as directed by the Election Commission, that the result of the election has not been materially affected by the alleged non-compliance of rule 92 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, or otherwise, that he has conducted the election properly, that he has declared the candidates as duly elected in conformity with the law and that at the time of the scrutiny of the ballot papers the petitioner did not raise any such objection.

4. The petitioner in his reply to the statement of the second respondent has stated that the candidates who were duly nominated but who had withdrawn their candidature are not necessary parties to the election petition, that at all events the non-joinder of such parties is not fatal to the petition, that if it is considered that they are either necessary or proper parties permission may be given to implead them and that the Election Commission having the powers to admit an election application even though there was defective verification of the petition at its inception, admitted the same drawing attention of the petitioner to the defect noticed by it regarding the verification. He re-affirms the allegations made in the petition. To the third respondent's objections he has filed a reply stating that there is no relevancy in referring to the directions of the Election Commission in concealing the serial number by pasting a thick paper, that the third respondent must be deemed to have admitted that the number given on the envelope is the number given in the electoral roll and not the serial number of the ballot paper, that rule 92 is in express terms mandatory and that the elections have been materially affected in that this mandatory provision has been over-looked.

5. The following issues were framed on 6-8-1956:

- (1) Was the Officer who has attested the signature of the elector in 61 ballot papers a Gazetted Officer of the Government of Mysore?
- (2) Is the direction that the signature of the elector must be attested by a Gazetted Officer a directory one and not mandatory and is the attestation by the Officer a valid one? Is it open to the Tribunal to treat such votes as valid?
- (3) Is the petitioner entitled to a scrutiny of and recount of such votes?
- (4) Did the numbers entered on several of the envelopes in which the ballot papers were placed not agree with the numbers of the respective ballot papers? If so, are they not invalid? Is the election of the respondents 1 and 2 void on this ground?
- (5) Did Sriyuts Channabyre Gowda and Linge Gowda who had withdrawn their candidatures necessary parties to the petition? Is the petition bad for non-joinder of these candidates?
- (6) Is the verification of the petition defective and can it be cured? Has it been cured by sending the subsequent petition? Does its non-publication affect the maintainability of the petition?
- (7) To what reliefs if any is the petitioner entitled?

6. Arguments were heard on issues Nos. 5 and 6 on 9-8-56 and an order was passed on 10-8-56 holding that Sriyuts Chinnabyre Gowda and Linge Gowda who had withdrawn their candidatures are proper parties to the petition, and that the petition is not bad for non-joinder of these candidates. The petitioner was directed to add them as respondents. On the 6th issue it was held that the verification of the petition is defective and it could be cured by amending the original verification and that the non-publication of the petition so verified does not affect the maintainability of the original petition. Notices were issued to Channabyre Gowda and Linge Gowda, who were added on as respondents 4 and 5. They filed their statements on 23-8-1956. Their objections are very similar to those raised by the second respondent.

7. On 4-9-56 several documents were marked as noted in the order sheet of that date. On 5-9-56 the petitioner examined one witness and closed his case. On 13-9-56 the Chief Secretary to the Government of Mysore and a Superintendent of the Accountant General's Office were examined on behalf of the second respondent. On 19-9-56 the Registrar of the University of Mysore was examined for the second respondent. He closed his case. The third respondent also closed his case without examining any witnesses. No evidence has been adduced on behalf of respondents 4 and 5.

8. *Issues 1 and 2.*—On 4-9-56 the counsel for the third respondent produced a sealed box containing all the ballot papers and the seals were intact. The box was opened and eight packets were taken out. The seals on the packets were also intact and they were opened. In packet No. 8 there were 65 ballot papers. Of these 56 are rejected on the ground that they had not been duly attested and on one of them, marked Ext. P1, the reasons have been given in full. All these 56 rejected ballot papers have been attested by Shri N. Siddalingappa, Treasury Officer and Personal Assistant to the Commissioner, Corporation of the City of Bangalore. The remaining nine ballot papers have been rejected for other reasons. The first contention urged on behalf of the petitioner is that Shri N. Siddalingappa is a gazetted officer and that the attestation by him is proper. The name of Shri N. Siddalingappa, M.A., LL.B., is found at page 230 of The Mysore Half-Yearly Civil List Ext. P 17. He is shown as Personal Assistant to the Commissioner and his pay is given as Rs. 475 plus Duty Allowance Rs. 75. This Civil List is corrected up to 1st October 1955 and it is not disputed that he continued to hold the same post even on the date on which he attested the signature of the electors on the ballot papers. In Ext. P11, a circular issued by the Chief Electoral Officer for Mysore to the Returning Officers of the Graduate's Constituency and the Local Authorities Constituencies of Bangalore, Kolar, Shimoga and Chitaldrug-cum-Bellary, it is stated that a list of the names of the Gazetted Officers of the Central Government under the Audit Control of the Accountant General, Bangalore working in this State received from the Accountant General (Mysore) Bangalore is enclosed for information and that (names of) the other gazetted officers working in the State are printed in the Civil List compiled by the Government. It is therefore contended that the civil list contains the names of all the gazetted officers working in the State and that since the name of Sri N. Siddalingappa is found in the Civil List he must be deemed to be a gazetted officer. But it is in the evidence of R.W.1 Sri N. Puttarangaswamy, Chief Secretary to the Government of Mysore, that the Civil List contains names of the others besides gazetted officers. Exhibit P 16 is the Mysore Half-Yearly Civil List corrected up to 1st January 1948. Therein there is a note to the Index printed on the last page which is as follows:—

"N.B.:—Names of non-gazetted officers are omitted in the Index References are given for them in the Table of Contents."

The name of Sri N. Siddalingappa is found in the Index at page 228. He was then working as Revenue Officer on a pay of Rs. 200 and a consolidated allowance of Rs. 75. From this it is contended that Sri N. Siddalingappa was a gazetted officer even as early as 1948 and he continued to be as such and has been promoted to a higher post. The note to the index has been omitted in the Mysore Half-Yearly Civil List corrected up to 1st April 1951 (Exhibit P 18) and the subsequent issues thereof. A suggestion was put to R.W. 1 Sri N. Puttarangaswamy that a note similar to Ext. P 16(a) is not found in Ext. P 18 because the names of the non-gazetted officers, for example Sub-Registrars, are omitted. R.W. 1 Sri N. Puttarangaswamy denied it and said that he would not accept this suggestion. It is further stated by him that the Civil List contains not merely the names of gazetted officers but of others also. Therefore the mere fact that the name of Sri N. Siddalingappa is found in the Mysore Half-Yearly Civil List Ext. P 17 does not show that he is a gazetted officer. Per contra the evidence of R.W. 1 Sri N. Puttarangaswamy, Chief Secretary to the Government of Mysore and R.W. 2 V. Balakrishnan, Superintendent of the Accountant General's Office, Bangalore, clearly shows that Sri N. Siddalingappa is not a gazetted officer of the Government of Mysore. R.W. 1 Sri N. Puttarangaswamy states that a gazetted officer is a person that holds a gazetted appointment in the State, that Sri N. Siddalingappa does not hold any gazetted appointment in the Government, that he is not even a Government Officer and that he is only an employee of the Corporation. He further states that the names of all the gazetted officers of the Government of Mysore are given in the History of Services of Gazetted Officers in Mysore (Exhibit D1) and that the name of Sri N. Siddalingappa is not found in it. Exhibit D2 is a letter issued from the Chief Secretariat

and signed by the Assistant Secretary and that contains the names of Gazetted Officers of the Government who are in the employ of Bangalore Corporation. Sri N. Siddalingappa's name is not found in it. R.W. 1 Sri N. Puttarangaswamy states that since Sri N. Siddalingappa is not a Government Officer there is no question of lending him to the Corporation. R.W. 2 Sri Balakrishnan, Superintendent of the Accountant General's Office, Bangalore, states that he is working in the Gazetted Audit Department No. 1 for the last one year, that Ext. D1 is compiled by the Accountant General's Office, that it contains the names of all the gazetted officers of the Government of Mysore, that a record of service of every gazetted Government Servant is maintained by the Audit Officer as required by Rule 368 of the Mysore Services Regulations, that there is no such record for Sri N. Siddalingappa in their office, that if he were a gazetted Government servant his record of service would have been maintained in their office and the history of his services would have been included in Ext. D1, that the pay and allowances bills of a gazetted Government servant are audited in their office and that such a thing is not being done in the case of Sri N. Siddalingappa. The expression "Gazetted Officer" is not defined anywhere in any Act or Rules. R.W. 1 Sri N. Puttarangaswamy does not state who are "Gazetted Officers". But he states that the difference between a gazetted officer and a non-gazetted officer is as follows:

(1) The appointment of a gazetted officer is always published in the Mysore Gazette.

(2) A gazetted officer can draw his salary and allowances on his own bills signed by him.

(3) The record of services of each gazetted officer is maintained by the Audit Office.

(4) The powers and privileges of gazetted officers are also enumerated in the Financial Code, the Mysore Services Regulations and the Service Conduct Rules and other Rules.

It has not been shown that the appointment of Sri N. Siddalingappa has been published in the Mysore Gazette at any time. As regards the second and third tests, R.W. 2 Sri Balakrishnan, Superintendent of the Accountant General's Office states that a record of services of Sri N. Siddalingappa is not maintained in his office and that the pay and allowances bills of Sri N. Siddalingappa are not audited in his office. From these it is clear that Sri N. Siddalingappa is not a Gazetted Officer of the Government of Mysore.

9. The next contention urged on behalf of the petitioner is that even if Sri N. Siddalingappa is not a gazetted officer of the Government of Mysore, the attestation by him does not render the ballot papers invalid, that the direction is at best a directory one and not a mandatory one in view of the requirement that each voter has to make a selection and he had accordingly made such, that so long as there has been an attestation in writing before a particular officer who vouches for the signature of the elector and so long as the elector as such had voted, the Returning Officer ought to have held that there was due attestation and should not have rejected such votes on a bare technicality. Rule 92(1)(e) of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951 provides that a ballot paper shall be invalid on which, if it is a postal ballot paper, the signature of the elector is not duly attested. Rule 67 of the said Rules relates to the attestation of elector's signature on the ballot paper and it reads as follows:—

"An elector shall obtain the attestation of his signature but not of his vote on the postal ballot paper either by a Magistrate to whom the elector is personally known or to whose satisfaction the elector has been identified or

(e) in other cases such other person as may be notified in this behalf by the Election Commission."

A notification under this Rule or a copy thereof has however not been produced in this case. Instructions are printed on the ballot paper and instruction No. 5(e) reads as follows:

"In other cases, by any of the following persons who have been notified in this behalf by the Election Commission, namely—Any Gazetted Officer of the Government of Mysore, or of the Central Government."

It is presumed that there is a notification to this effect and none of the parties have challenged it. As stated earlier Sri N. Siddalingappa who has attested the signatures of electors on 56 ballot papers is not a gazetted officer of the Government of Mysore. The question now is whether Rule 92 is a mandatory one and the order of the Returning Officer rejecting them is correct or whether this rule is a mere directory one. There is no direct ruling of the Supreme Court on this point. In A.I.R. 1955 Supreme Court page 233 (*Hari Vishnu Kamath vs. Ahamed Ishaque and others*) Their Lordships have held that Rule 47(1)(c) (before amendment) was a mandatory one. They have observed:

"The practical bearing of the distinction between a provision which is mandatory and one which is directory is that while the former must be strictly observed, in the case of the latter it is sufficient that it is substantially complied with. How is this rule to be worked when the Rule provides that a ballot paper shall be rejected? There can be no degrees of compliance so far as rejection is concerned and that is conclusive to show that the provision is mandatory."

Rule 47 mentions the grounds for rejection of ballot papers in the case of constituencies other than Council Constituencies. Sub-rule (1) states that a ballot paper contained in a ballot box shall be rejected on any of the grounds specified thereunder. Rule 92 also specifies the grounds for declaring ballot papers invalid, but it is in respect of Council Constituencies. Rule 92(1)(e) provides that a ballot paper shall be invalid on which, if it is a postal ballot paper, the signature of the elector is not duly attested. Rule 95(4) provides that after the covers containing the postal ballot papers have been opened under clause (a) or clause (b) of sub-rule (2) and the ballot papers taken out from them, the Returning Officer shall first satisfy himself that the declaration on the back of each such paper has been duly signed and attested and that if the Returning Officer finds that the signature of the elector is not duly attested on any of those ballot papers he shall reject such ballot paper by endorsing thereon the word "rejected" and the ground of rejection and keep them separate. It will be noticed that the same words "shall reject" are used in this rule also. So as observed by Their Lordships of the Supreme Court there can be no degrees of compliance so far as rejection is concerned. It is therefore clear that Rule 92(1)(e) is a mandatory one, that the non-compliance with the said rule renders the ballot paper invalid and that the ballot papers which did not conform to the rule were rightly rejected by the Returning Officer.

10. The learned counsel for the petitioner contended that as long as the intention of the voter is made clear and there cannot be any doubt as regards the identity of the voter it is immaterial whether it is attested by a gazetted officer or other responsible person and that therefore these votes should be treated as valid. Such an argument was advanced in the case reported in A.I.R. 1955 Supreme Court 233 and Their Lordships observed as follows:

"It is argued with great insistence that as the object of the Election Rules is to discover the intention of the majority of the voters in the choice of a representative, if an elector has shown a clear intention to vote for a particular candidate, that must be taken into account under section 100(2)(c) even though the vote might be bad for non-compliance with the formalities. But when the law prescribes that the intention should be expressed in a particular manner, it can be taken into account only if it is so expressed. An intention not duly expressed is, in a court of law, in the same position as an intention not expressed at all."

If we may say with great respect these observations apply with equal force to the present case. Our finding on issue No. 1 is that Sri N. Siddalingappa the officer who has attested the signatures of the electors in 56 ballot papers is not a gazetted officer of the Government of Mysore. On issue No. 2 our finding is that the direction that the signature of the elector must be attested by a gazetted officer is a mandatory one and not a directory one, that therefore the attestation by Sri N. Siddalingappa is not a valid one and that it is not open to the Tribunal to treat such votes as valid. In view of our finding on issues Nos. 1 and 2, our finding on issue No. 3 is that the petitioner is not entitled to a scrutiny of and recount of such votes.

11. Another contention of the petitioner is that the numbers entered on several of the envelopes in which the ballot papers were placed do not agree with the numbers of the respective ballot papers and that therefore they are invalid and the election of respondents 1 and 2 is void on that ground. Sri V. K. Govindarajulu, the learned counsel for the third respondent admitted on 4th September 1956 that the number given on the envelope is not the serial number

of the ballot paper but the elector's number on the electoral roll given on the ballot paper and that there is a separate roll for each Municipality and hence the serial numbers repeat. Some of the ballot papers were taken at random and they and their counterfoils were marked. Exhibits P3 and P3(a) are the ballot paper No. MY 044466 and its counterfoil. The elector number on the electoral roll is written on it as '1'. Exhibit P3(b) is its cover. Sri V. K. Govindarajulu, the learned counsel for the third respondent, has stated that the elector No. 1 is common to 13 Municipalities, that there are 13 envelopes bearing No. 1 and that it is not possible to say now which envelope related to this ballot paper. One of them was however marked as Ext.P3(c). He has further stated that excepting in the case of Corporation of Bangalore where there are 75 members, there are 20 or less members in other Municipalities. Exhibit P4 and P4(a) are the attested portion of the ballot paper No. MY. 044457 and its counterfoil. Exhibit P4(b) is the cover relating thereto. Sri V. K. Govindarajulu stated that since the number on the envelope is 7, there are 13 envelopes bearing that number. One of them was marked as Ext. P4(c). The declaration portion, i.e., the attested portion of the ballot paper No. MY. 044401 and its counterfoil were marked as Ext. P6 and P6(a) respectively. The cover is marked as Ext. P6(b). Sri V. K. Govindarajulu, stated that there were several envelopes bearing No. 1 and produced one such from a bundle and it was marked as Ext. P6(c). The attested portion of another ballot paper No. MY 044578 and its counterfoil were marked as Ext. P7 and P7(a). Exhibit P7(b) is its cover. Sri V. K. Govindarajulu stated that there are several envelopes bearing No. 8 and produced one such from the bundle. It was marked as Ext.P7(c). Other declaration forms were also scrutinised and they were all found to contain the elector's number on the electoral roll. The serial number of the ballot paper is printed on the ballot paper and then there is a declaration as follows:

"I hereby declare that I am the person whose name appears as elector No..... on the electoral roll for Bangalore (Local Authorities) Constituency."

The elector's number is written in the space provided for therein. As for instance in Ext.P3 the serial number on the ballot paper is MY.044466 and the elector number is "No. 1". It is the elector's number, i.e. No. 1 that is written on the cover Ext.P3(b) and that number is found on one of the envelopes Ext.P3(c). There are 12 more envelopes like that. Since there are 13 Municipalities and in most of the Municipalities there are about 20 members, the numbers up to 20 would repeat of ten. It is contended on behalf of the petitioner that this is not in accordance with the provisions of Rule 92(2) (b) of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, which reads as follows:—

"A postal ballot paper shall be also invalid if the number thereof does not agree with the number of the ballot paper entered on the envelope in which it is placed or, where the envelope has no number on it or,....."

It is not only admitted but it also clearly seen that the number of the ballot paper is not entered on the envelope. The number that is actually entered on the envelope is something else. The question now is whether this rule is mandatory or directory and whether the votes are invalid for non-compliance with this rule. As stated earlier, Rule 92(1) is a mandatory one, the non-compliance with which would render the vote invalid and liable to be rejected. Rule 92(2) also states that a postal ballot paper shall be invalid if the number thereof does not agree with the number of the ballot paper entered on the envelope in which it is placed. A distinction is sought to be made between these two sub-rules on the ground that in respect of rule 1 the obligation is on the part of the elector while in respect of rule No. 2 it is the duty of the Returning Officer to put in the number, and therefore Rule 92(1) is a mandatory one and Rule 92(2) is a directory one. In a certain case a ballot paper had been rejected by the Returning Officer on the ground that it did not bear the requisite official mark. The court, in a petition to set aside the election, held on an examination of the ballot paper that the official stamp had been applied though imperfectly and that it should have been accepted and in the course of the judgement observed as follows:—

"We think that, in a case where the voter is in no sense to blame, where he has intended to vote and has expressed his intention of voting in a particular way, and, so far as his part of the transaction is concerned, has done everything that he should, and the only defect raised as a matter of criticism of the ballot paper is some defect on the part of

the official machinery by which the election is conducted, special consideration should (and, no doubt, would) be given in order that the voter should not be disfranchised."

The Supreme Court held that these observations are no authority for the proposition that if there was no mark at all on the ballot paper it could still be accepted on the ground of intention and that on the other hand the whole of the discussion is intelligible only on the hypothesis that if there was no mark at all on the ballot paper, it must be rejected (*Vide A. I. R. 1955 Supreme Court 233 at page 249*). It is therefore clear that even if the mistake is on the part of the officers in not putting the requisite official mark, still the ballot paper would be invalid. Their Lordships did not accept the view that any special consideration should be given in such cases nor that the voter should not be disfranchised. So there is no distinction between a mistake made by the voter and a mistake made by the officer, they and both stand on the same footing. The provisions of Rule 92 also make it clear that in both the cases the ballot paper shall be invalid. The Returning Officer should first reject all invalid ballot papers and then proceed to count only the valid papers. The Returning Officer has not rejected these votes, though they are invalid under Rule 92 (2) and they are liable to be rejected. It is contended on behalf of the second respondent that the mistake which the Returning Officer has committed is not only in respect of the votes cast in his favour but is common to all the votes polled at the election, and that therefore no prejudice has been caused to either. He relies on the provision of section 100(2) (c) that only if the result of the election has been materially affected by the improper reception or refusal of a vote or by the reception of any vote which is void, or by any non-compliance with the provisions of Constitution or of this Act or of any Rules or Orders made under this Act, the Tribunal shall declare the declaration of the candidate to be void, and states that the result of the election has not been materially affected by the reception of these votes. There is no force in this contention. As pointed above these votes are invalid under the provisions of Rule 92 (2) and as such are liable to be rejected. In A. I. R. 1955 Supreme Court 233 it has been held that the expression "the result of the election" in section 100 (1) (c) and Section 100 (2) (c) must unless there is something in the context compelling a different interpretation, be construed in the same sense as in section 66, and there it clearly means the result on the basis of the valid votes. In this case the valid votes would be nil or zero. If all the three candidates got zero votes, none of them could be declared as elected. The reception of invalid votes has therefore materially affected the result of the election. Therefore it follows that neither respondent No. 1 nor respondent No. 2 could be said to have got a majority of votes and that the election of these two respondents (respondents 1 and 2) is void. Our finding on issue No. 4 is that the numbers entered on all the envelopes in which the ballot papers were placed do not agree with the numbers of the respective ballot papers and that therefore they are all invalid. The election of respondents Nos. 1 and 2 is void on this ground.

12. We hereby declare that the election of the two returned candidates, viz S. R. Guru alias Gurulingiah (1st respondent) and B. M. Krishna Murthy (2nd respondent) is void. Since the petitioner has failed on issues 1 and 2 and has succeeded on issue No. 4 and the mistake was mainly on the part of the officers in marking the numbers on the envelopes we direct that the parties shall bear their own costs.

Dictated to the stenographer, transcribed and pronounced in open court on the 26th day of September 1956.

(Sd.) G. NATARAJAN, *Chairman.*

(Sd.) R. P. VASUDEO, *Member.*

(Sd.) BELIGERE RAMACHANDRA RAO, *Member.*

[No. 82/4/56/30914.]

Chairman.

A. KRISHNASWAMY AIYANGAR, *Secy.*